

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 2 OF CITY CODE CHAPTER 10-5 RELATED TO SANITARY CONDITION OF REAL PROPERTY TO ADD FLEXIBILITY IN REGULATIONS CONCERNING HIGH WEEDS AND GRASSES, TO PROMOTE WATER QUALITY, HABITAT PRESERVATION, AND EFFICIENT MAINTENANCE OF PUBLICLY MAINTAINED LANDS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Section 10-5-21 (*Duty to Maintain Property in Sanitary Condition*) of the City Code is amended to amend Subsection (B), repeal and replace Subsection (D), and add new Subsections (E), (F), and (G) to read:

§ 10-5-21 DUTY TO MAINTAIN PROPERTY IN SANITARY CONDITION.

- (A) An owner, occupant, or other person in control of real property shall maintain the property in a safe, sanitary condition.
- (B) A person may not allow the following to accumulate on the person's property or in the area from the person's property line to the adjacent curblineline:
 - (1) weeds or grasses more than 12 inches tall;
 - (2) garbage, rubbish, or brush; or
 - (3) filth, carrion, or any other unsightly, objectionable, or unwholesome matter.
- (C) A person may not allow stagnant water that is likely to promote disease to accumulate on the person's property. A person shall drain, fill, or re-grade the person's property to remove or prevent a violation of this subsection.
- (D) It is an affirmative defense to a violation of Section 10-5-21 (B)(1) that the weeds or grasses observed on the subject property did not reduce or impair visibility or line of sight at, of, or for right of way, vehicles, cyclists or pedestrians, and that the over-height weeds or grasses observed were located at or on one or more of the following:
 - (1) an area within or adjacent to a stream, waterway, or water quality facility;
 - (2) a landscaped area arranged and managed consistent with a plan accepted by the City which area includes native or adapted vegetation, where weed control and other periodic maintenance occurs; or

1 (3) city parkland, a greenbelt, nature preserve, or other publicly maintained open
2 space.

3 (E) The City Manager may authorize a department to adopt rules under Section 1-2-
4 1 to implement, administer, enforce, or comply with Chapter 10-5(Miscellaneous
5 Public Health Regulations).

6 (F) The City Manager may authorize a department to adopt alternative compliance
7 rules under Section 1-2-1 that permit maintenance of specified perimeters on
8 properties defined as large parcels, undeveloped, or minimally developed, as an
9 alternative to compliance of the entire property with Subsection 10-5-21(B).

10 (G) Violation of Chapter 10-5 or any rule adopted under Section 1-2-1 pursuant to
11 Chapter 10-5 is a violation of City Code, with enforcement authorized and
12 punishable by any one or combination of the following

13 (1) an administrative adjudication under Texas Local Government Code Chapter
14 54 Subchapter C through procedures that comply with the requirements of
15 Section 54.043 or 54.044;

16 (2) as a Class C misdemeanor by a fine upon conviction not to exceed \$500
17 unless proof of a culpable mental state is pled, in which case the fine upon
18 conviction shall not exceed \$2,000. Proof of a culpable mental state is
19 expressly waived when a fine of \$500 or less is sought for the offense;

20 (3) in a civil proceeding brought before any court, hearing officer, or quasi-
21 judicial body of competent jurisdiction as applicable; or

22 (4) via an abatement of the property or of any unsafe or unsanitary condition
23 present upon consent or as authorized by applicable state or local law when
24 conditions present an immediate danger to the health, life, safety, or welfare
25 of any person.

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27 **PART 2.** Subsection (A) of Section 10-5-22 (*Notice of Violation*) of the City Code is
28 amended to read:

29 **§ 10-5-22 NOTICE OF VIOLATION.**

30 (A) The City Manager shall designate a department to [~~director of the Solid Waste~~
31 ~~Services Department shall~~] give written notice to the property owner when the
32 department [~~director~~] determines that an unsightly, objectionable, or unsanitary condition
33 exists on the property in violation of this article. The department [~~director~~] shall provide

1 the notice as required by Section 342.006 (*Work or Improvement by Municipality;*
2 *Notice*) of the Texas Health and Safety Code.

3 **PART 3.** Section 10-5-23 (*Appeal of Notice*) of the City Code is amended to read:

4 **§ 10-5-23 APPEAL OF NOTICE.**

5 (A) An owner may appeal a notice of violation issued under this article by filing a
6 written statement with the director of the [~~Solid Waste Services Department~~] designated
7 department not later than the seventh day after the notice is given. An owner may only
8 appeal on the following grounds:

9 (1) the notice was not properly served; or

10 (2) a violation did not exist on the property on the date the notice was issued.

11 (B) The director of the designated department [~~Solid Waste Services Department~~] shall
12 hold a hearing not later than the 10th day after receipt of the appeal statement. The
13 director may designate a person to conduct the hearing and to make a recommendation to
14 the director.

15 (C) The director shall make a determination and inform the owner of the director's
16 decision on the appeal not later than the fifth day after the hearing.

17 **PART 4.** This ordinance takes effect on _____, 2012.

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19 **PASSED AND APPROVED**

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21 _____, 2012

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24 Lee Leffingwell
25 Mayor

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28 **APPROVED:** _____

29 Karen M. Kennard
30 City Attorney

31 **ATTEST:** _____

Shirley A. Gentry
City Clerk